

Section B-7 Legal Affairs

The contents of this Toolkit have been developed to assist you in your efforts to support family readiness. Every effort has been made to ensure that the information provided is current and accurate. However, because statutory and regulatory changes may have occurred since the publication of this Toolkit, the Office of the Assistant Secretary of Defense for Reserve Affairs cannot assume responsibility for its continued accuracy. Before taking any significant action based on the contents of this Toolkit, you should contact your Family Readiness Program representative or legal officer, as appropriate, to secure the most current information.

Legal Affairs

Soldiers' and Sailors' Civil Relief Act **(See also the Section on USERRA, B-2-2-1)**

The Soldiers' and Sailors' Civil Relief Act (SSCRA) was enacted by Congress at the beginning of World War II to provide service members with temporary relief from civil proceedings. The law was intended to make the transition from civilian to military life easier and less of a hardship. The SSCRA has been amended and may change in the future. Seek advice on the SSCRA from your local military legal assistance office. These benefits apply not only to you, but also to your family members.

Authority

Title 50, Appendix, United States Code, Sections 501-593.

Scope of Protection

The Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA), as amended, was passed by Congress to provide protection for individuals entering or called to active duty in the military service. It is intended to postpone or suspend certain civil obligations to enable service members to devote full attention to duty. The Act applies to the United States, the states, the District of Columbia, all U.S. territories and in all courts therein. Reservists and the members of the National Guard are protected under the SSCRA while on active duty. The protection begins on the date of entering active duty and generally terminates within 30 to 90 days after the date of discharge from active duty.

Key Concept

For certain important provisions of the SSCRA to be of benefit, the ability of the service member to either defend or pursue an action must be **materially affected** by his or her military service. This can be due to geographic prejudice, i.e., the military member's duty location prevents personal attendance at the judicial proceeding to protect his or her rights. It can also be due to economic prejudice, i.e., the military member cannot meet financial obligations due to military service (reduction in income as a result of entering military service results in inability to meet obligations). The court compares the service member's financial condition prior to entry on active duty with the financial condition while on active duty.

Protection Offered by the SSCRA

The Soldiers and Sailors Civil Relief Act provides valuable protection to you and your family. It can ensure that deployment does not cause serious harm. As valuable as the Act may be, it means nothing unless you understand your rights under the Act and know how to protect your interests. You and your spouse should make the SSCRA part of your family readiness planning. If you believe that deployment will result in a significant decrease in income that will impact on your ability to meet your financial obligations, your planning should include taking steps to notify your creditors, landlord, and mortgage company of your deployment and intent to seek protection under the Act. Here are some of the ways in which the act can work for you.

Termination of Leases

A lease for property occupied for dwelling, professional, business, agricultural or similar purposes may be terminated by a service member if the following two conditions are met:

- The lease was entered into by the member before he or she started active duty; and
- The leased premises have been occupied for the above purposes by the member or his/her dependents.

To terminate the lease, the member must deliver written notice to the landlord at any time after call to active duty or receipt of orders for active duty. Oral notice is not sufficient. The effective date of termination is determined as follows:

- For month to month rentals, the termination becomes effective 30 days after the first date on which the next rental payment is due subsequent to the date when the notice of termination is delivered. For example, if the rent is due on the first day of each month, and notice is mailed on August 1, then the next rental payment is due and payable on September 1. Thirty days after that date would be October 1, the effective date of termination.
- For all other leases, termination becomes effective on the last day of the month following the month in which proper notice is delivered. For example, if the lease requires a yearly rental and proper notice of termination is given on July 20, the effective date of termination would be August 31.

The service member is required to pay rent for only those months before the lease is terminated. If rent has been paid in advance, the landlord must prorate and refund the unearned portion. If a security deposit was required, it must be returned to the service member upon termination of the lease (Sec. 534).

Eviction

Landlords cannot, unless they obtain permission from a court, evict dependents from rented housing where the rent does not exceed \$1,200.00 per month. The Court may stay such proceedings for up to three months. Protection will likely be afforded in cases where the rental amount exceeds \$1,200.00 when the agreed rent is modest and, taking inflation into account, is equal to or less than the \$1,200.00 limit (Sec. 530).

Installment Contracts and Mortgage Foreclosures

A service member who, prior to entry into active duty, entered an installment contract for the purchase of real or personal property, will be protected under the SSCRA if the service member's ability to make the payments is "materially affected" by the military service.

- The service member must have paid, prior to entry onto active duty, a deposit or installment under the contract.

- The seller is then prohibited from exercising any right or option under the contract to rescind or terminate the contract, to resume possession of the property for nonpayment of any installment due, or to breach the terms of the contract, unless authorized by the court.

The SSCRA protects service members against foreclosures of mortgages, as long as the following facts are established:

- The relief is sought on an obligation secured by a mortgage, trust deed; or other security in the nature of a mortgage on either real or personal property;
- The obligation originated prior to entry on active duty;
- The property was owned by the service member or family member prior to entry on active duty;
- The property is still owned by the service member or family member at the time relief is sought.
- The ability to meet the financial obligation is materially affected by the service member's active duty obligation (Sec 531 and 532).

Default Judgments

Before a court can enter a default judgment (for failure to respond to a lawsuit or failure to appear at trial) against a military member, the person who is suing the service member must provide the court with an affidavit stating the defendant is not in military service. If the plaintiff files no affidavit and the defendant is in the military, the court will appoint an attorney to represent the defendant's interests (usually by seeking a delay in the proceedings). The court may also require the plaintiff to secure bond to protect the defendant against harm. If a default judgment is entered against a military member, the judgment may be reopened if the member makes an application within 90 days after leaving active duty, shows he or she was prejudiced, and shows he or she had legal defense (Sec. 520).

Stay of Proceedings

The court has direction to delay a civil court proceeding when the requirements of military service prevent the member from either asserting or protecting a legal right. The stay provisions are applicable during the period of service plus 60 days thereafter. Normally granted unless the court finds ability to defend or pursue action not materially affected by military service (Sec. 521).

Health Insurance

A person called to active duty is entitled to reinstatement of any health insurance that (1) was in effect on the day before such service commenced, and (2) was terminated effective on a date during the period of such service (Sec. 593).

Taxation

The member's state of legal domicile may tax military income and personal property. Legal domicile is not changed solely by virtue of military service. Collection of income tax may be deferred for period of service plus six months if the ability to pay is impaired by military service. Property cannot be sold to satisfy a tax obligation or assessment except upon application to the court. The Court then determines if stay is appropriate (Sec. 560 and 574).

Maximum Rate of Interest

If, prior to entering service, a member incurs a loan or obligation with an interest rate in excess of 6%, the member will, upon application to the lender, not be obligated to pay interest in excess of 6% per annum during any part of the period of military service unless the court finds the member's ability to pay has not been materially affected (Sec. 526).

Stay of Execution of Judgments/Attachments

If the person against whom action brought is, or within the last 60 days was, in military service the court may stay the execution of judgments, court actions, attachments and garnishments. If the member requests a stay, it must be granted unless the court finds the member's ability to comply with the order or judgment is not materially affected by military status (Sec. 521).

Statute of Limitations

Member's time in service cannot be used to compute the time limits for bringing any action or proceeding by or against a member, whether in court or elsewhere. However, this does not apply to time limitations established under federal tax laws (Sec. 525).

Insurance

Member's private life insurance policy is protected against lapse, termination, and forfeiture for nonpayment of premiums or if any indebtedness for period of military service plus two years. Professional liability insurance of persons called to active duty will be suspended upon written request to the insurance carrier for the period of the individual's active duty. Insured or beneficiary must make application to the Veterans Administration for protection (Sec. 540-547).